



## **MWAC Submission on the Metropolitan Local Government Review Panel's Final Report**

### **1. Introduction**

This Submission has been prepared by the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of the Association with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management), and a number of Local Governments. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate.

This Submission relates specifically to recommendations 6 and 11 of the *Metropolitan Local Government Review Panel's Final Report*, as these have the potential to impact significantly on Local Government waste management activities. It should be noted, that if the State Government implements all of the Panel's recommendations, there will be significant implications for how waste is managed. This Submission should be read in conjunction with the WALGA Submission on the Final Report, as well as both the WALGA and MWAC Submissions on the Metropolitan Local Government Review Panel's Issues Paper, and Draft Findings.

This Submission was endorsed by MWAC on **Wednesday, 20 February 2013**.

### **2. Recommendations**

**Recommendation 1:** There is a need for greater leadership and support by the State Government in developing and funding the infrastructure required for managing waste. The State Government needs to establish its waste management credibility by immediately restoring full hypothecation of the Landfill Levy for waste and committing to the Sustainable Waste Hierarchy.

**Recommendation 2:** The number of Regional Councils should be based on shared objectives, and binding commitments with compulsory membership for the purposes of waste management treatment and disposal. These Regional Councils should be identified using an evidence based approach considering geographic location, tonnages of material and transport routes.

### **3. Waste management implications**

Panel recommendation 6

*"The State Government consider the management of waste treatment and disposal at a metropolitan-wide scale either be undertaken by a State authority or through a partnership with local government."*

MWAC is of the view that this recommendation has not identified a conclusive course of action. As such, MWAC has opted to respond by detailing a number of points that need to be considered by the Government as it responds to the Report and makes a decision on future waste management structures. It is hoped that this Submission will assist the

Government in understanding the current situation, and the possible repercussions of ill-conceived and reactive interventions.

### **3.1 Options for Change**

MWAC considers that a more flexible approach to Local Government governance in relation to waste management would be beneficial. As the Association highlighted in its Submission to the Panel on the Draft Findings Report - this could be achieved by employing the Regional Subsidiaries or Council Controlled Organisation (CCO) Models (WALGA Submission: Draft Findings, 2012). The CCO model is most appropriate for a significant waste management undertaking due to the flexibility of the model and its focus on commercial activities. The CCO model allows for directors with a commercial mindset and targeted expertise and experience to be appointed to the board of the CCO. Local Government anticipates that the State Government will consult with the sector, in making a decision on which structure will be utilised for waste management in the future.

Should the Government choose to alter the waste management structure in the future and diminish the responsibilities of Local Government; appropriate amendments will need to be made to the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act 2007). Currently, Local Government is the only entity with a defined legislative responsibility for any part of the waste stream - Local Government waste. Any legislative shift in responsibilities for waste would clearly have an impact on businesses, consumers and the Western Australian economy, thus triggering the requirement for a Regulatory Impact Assessment (Regulatory Impact Assessment Guidelines, 2010).

### **3.2 Vision**

A clear statutory plan is needed for waste management in the metropolitan area. Such a plan would allow high level coordination of the infrastructure and policies needed to meet the targets identified in the State Waste Strategy and ensure efficient and effective collection, treatment, recovery and disposal of waste. The current Metropolitan Region Scheme (MRS) offers an example of a good strategic approach. Under the MRS, a high resolution plan is established at a metropolitan scale with finer grain detail developed through more localised plans.

If the Government seeks to change the current structures for managing waste, the motivating factors for change need to be clearly identified. If the Government is seeking to address existing challenges with the waste management structure, these need to be clearly understood or there is the potential that they will be passed onto a new entity tasked with waste management.

MWAC is of the view that there are a number of challenges with the current Regional Council structure that need to be addressed. These challenges include:

- Basis for membership of a Regional Council: the way the membership groupings have evolved means they are no longer based on geographic regions;
- Instability of Regional Council membership: there are no requirements for Local Governments to be a member of a Regional Council, or to remain as a member on a long term basis;
- Role of Elected Members: Councillors serving on both a Local Government and Regional Council can face challenges in making decisions for the benefit of an entire region, while still representing the interests of their individual Council;
- Constraints with securing capital for waste treatment infrastructure: these come in the form of legislation, long term supply agreements, and the borrowing capacity of members; and
- Governance constraints: Regional Councils are required to operate under the *Local Government Act 1995*. The Act imposes a governance structure on Regional Councils which may not be advantageous for making strategic decisions.

Additionally, the Government needs to undertake an assessment as to the effectiveness of structures that have been established in the past to provide an overarching solution for a particular issue, such as the Swan River Trust (SRT). While the SRT does achieve positive results, it still faces a number of challenges in addressing the issues it was established to resolve. These challenges centre on inadequate funding, and a lack of legislative backing to address the cause of problems with the river system (for example, the input of nutrients, contaminants and sediment from multiple sources). MWAC believes a similar structure for a service such as waste treatment and disposal would struggle to be effective.

### **3.3 Transparency**

The concept of waste is something that is accessible and 'understood' by the general public. As such, there is a need for a high level of transparency and accountability in relation to the treatment and disposal options employed by whichever entity manages and treats waste. Identifying drivers for action would assist in establishing a transparent decision making process. A significant driver in making decisions includes the provisions of the WARR Act 2007 in that the Waste Hierarchy is part of the Act and should guide the decision process (s5, WARR Act 2007).

### **3.4 Expertise**

As the complexity of the waste stream has increased, along with knowledge of environmental impacts of waste, the profession of managing waste has significantly evolved. It is a sector that rarely receives recognition for the important role it plays; Local Government has invested heavily in developing the various expertise required in this field. When considering its involvement in waste management, the State Government should assess the level of internal expertise and capacity available to develop infrastructure and deliver services.

Should the Government take on a greater role in waste treatment and disposal, there is a need for the Government to consider the logistics and time involved in doing so. Substantial planning is required to avoid a situation where whichever body is responsible for managing waste, has to develop an environmentally acceptable waste treatment solution on a *metropolitan scale* with only a limited lead time.

### **3.5 Market monopolies**

There is a continued theme throughout the Final Report, of a move towards a metropolitan solution to managing waste. MWAC requests that the Government carefully considers this method of service delivery, as it can (if managed poorly over a prolonged period of time) result in a market monopoly that stifles competition and discourages innovative approaches to recovering resources. In both metropolitan Adelaide and Brisbane, the management of the kerbside recycling stream is currently contracted out to a *single private company*. This makes it difficult for other service providers to establish themselves within the market.

This type of service delivery arrangement can not only reduce the number of service providers, but can also have implications for managing financial and operational risks. Using multiple, smaller scale waste treatment facilities as opposed to one 'super plant' to treat waste can be an effective strategy to minimise these risks. For example, when an emergency situation arises, the volumes of waste that are generated can surpass the capacity of pre-existing service providers or plants. There are added benefits of employing localised solutions, including reduced transport distance for waste and consequently less carbon emissions and damage to roads.

In pursuing economies of scale, the Government needs to employ an approach that encompasses and encourages competition.

### **3.6 Finances**

MWAC is concerned with the potential for increases in the cost of living should the State Government become involved in waste treatment and disposal. MWAC understands that although some Government services are subsidised (2013 Economic and Fiscal Outlook, pg 308); others are required to bring an annual financial return to the Government. Council services are provided on the basis of benefits to the local community rather than profit. The *Local Government Act 1995* stipulates that charges for services can only be based on the cost of providing a service. This places considerable constraints on raising funds to finance regional infrastructure. Additionally, individual Local Governments that underwrite loans for regional infrastructure, face a situation where their capacity to borrow money in the future is affected. The State Government could assist in reducing these constraints, by underwriting loans or lending finance with low interest.

In relation to the current funding situation for waste management, it should be noted that Local Government is highly concerned by the State's handling of the Waste Avoidance and Resource Recovery Levy. As commented in the previous MWAC Submission to the Panel, "*the restoration of full hypothecation of the landfill levy will go some way to establishing the State Government's legitimacy as a leader in regards to waste management.*"

The recent history of the WARR Levy was incorrectly documented by the Panel in the Final Report. In 2009, the Government increased the levy from \$7 to \$28/tonne for putrescible waste. This was done without consultation with the sector. Additionally, the majority of collected funds (75%) were diverted to finance the operations of the wider Department of Environment and Conservation (DEC). Since then, funding available for waste initiatives in the wider sector has generally reduced, with the 25% allocated to waste management increasingly covering the staffing costs of the Waste Authority, Waste Management and Industry Regulation Branches of the DEC.

### **3.7 Implications for the non-metropolitan area**

MWAC is concerned that recommendation 6 could result in a structure that effectively creates a further divide in the level of services and treatment options between the metropolitan and non-metropolitan areas. A new entity with responsibility for managing waste from the majority of the State's population would have greater lobbying power than those in remote areas.

Non-metropolitan Local Governments have expressed concerns that the approach (yet to be determined) by the State Government towards managing waste in the metropolitan area, could be applied to the non-metropolitan area at a later date. It is considered that this application has not been effective for other services such as water and power, as the administration of these services is based predominately in Perth. There is an expectation that the non-metropolitan area has access to the same level of support and benefits as the metropolitan area.

***Recommendation 1:*** *There is a need for greater leadership and support by the State Government in developing and funding the infrastructure required for managing waste. The State Government needs to establish its waste management credibility by immediately restoring full hypothecation of the Landfill Levy for waste and committing to the Sustainable Waste Hierarchy.*

## **4. Regional Council implications**

Panel recommendation 11

*“The existing Regional Local Governments in the metropolitan area be dissolved, their provisions in the Local Government Act 1995 be repealed for the metropolitan area and a transitional plan for dissolving the existing bodies in the metropolitan area be developed.”*

The Panel has not presented sufficient justification for this recommendation. Furthermore, it appears contrary to the intention of the review, to dissolve a structure that has facilitated cooperation between Councils. It should be noted that the Regional Council model can be successfully used to deliver other services in areas where it is difficult to obtain staff such as Environmental Health Officers and Building Surveyors. As noted in section 3.2 of this Submission and previous Submissions to the Panel, there are issues with the current Regional Council structure, however these can be resolved. MWAC requests that the Government clearly states the approach it will take in developing any new model for waste treatment and disposal; failing to do so, will result in continued uncertainty and a further fracturing of the relationship between the State and Local Government.

#### **4.1 Current role of Regional Councils**

The Panel has observed that each Regional Council *“is tending to implement a solution for its own region, without considering an overall metropolitan solution”* (Final Report, pg 46). In responding to this observation, it is important to note that this can be directly attributed to a defined legislative responsibility for a geographical area. It is not the responsibility of a Regional Council (under the current structure) to provide services on a wider scale. However, it should be noted that Regional Councils *do* contribute at a much wider scale. The innovative waste management outcomes that have been achieved by Regional Councils (such as having the most AWT capacity of any other jurisdiction), in spite of the numerous challenges associated with the current structure should be commended. Increased involvement by the State Government is welcomed, particularly in terms of leadership in planning and providing support and funding for future waste management needs (refer to section 3.6).

#### **4.2 Future challenges**

The Panel has not presented any solutions (other than total dissolution) for the challenges facing Regional Councils. There is a very real possibility that using the Panel’s approach of dissolution will result in a situation where the challenges experienced in the current structure are simply passed onto a new entity tasked with waste management. This previously occurred with the creation of Development Assessment Panels (DAP’s). In broad terms, DAP’s were established to make planning determinations on State significant development applications, but was only granted the same planning powers as a Local Government. This means that all decisions are still subject to an appeals process (State Administrative Tribunal), and a DAP faces the same challenges as Local Government in considering an application and resolving any conflicts in reaching a decision.

MWAC believes that Regional Councils should be established based on shared objectives and binding commitments along with compulsory membership for the purposes of waste treatment and disposal. The number of Regional Councils should be identified by utilising an evidence based approach, considering the geographical location, tonnages of waste and transport routes. Additionally, due regard should be made of the comments in this Submission on the various options available to establish entities tasked with managing waste (section 3.1).

Should the Government accept the Panel’s recommendation to dissolve Regional Councils, MWAC supports the Panel’s suggestion for the overall reform process, for the establishment of an independent commission to oversee the transition to a new entity (Final Report, pg 11). The Government will need to strike a balance between utilising the

current expertise in the sector as well as potential competing interests if it chooses to develop an alternative waste management structure in the future.

#### **4.3 Potential for misinformed decisions**

MWAC requests that the Government does not take the Panel's documented observations 'as read,' but carries out its own objective analysis of statements such as the following on page 46 of the Final Report:

*“Currently, it seems that Perth will have five or six resource recovery facilities, reflecting the fact that each Regional Council is tending to implement a solution for its own region, without considering an overall metropolitan solution. Brisbane, with a population greater than Perth, will ultimately only have one or two such facilities.”*

This statement does not accurately reflect the current situation in Brisbane where there are very different economic drivers to Perth (for example, landfill is more affordable). Additionally, Brisbane also has a market monopoly in place for managing the recycling stream (refer to section 3.5). For these reasons, these comments by the Panel should not be used as a justification for recommendation 11. MWAC is also concerned that the Panel has remained silent in response to calls for its reasoning to be revealed on the observation that Regional Councils operate with “*flawed accountability*” (MWAC Submission: Draft Findings, 2012).

#### **4.4 Impact of the reform process**

The current metropolitan Local Government reform process is having an impact on Local Government's future planning for waste management. Local Governments, Regional Councils and the private sector are understandably unwilling to commit to projects with this level of uncertainty.

***Recommendation 2:*** *The number of Regional Councils should be based on shared objectives, and binding commitments with compulsory membership for the purposes of waste management treatment and disposal. These Regional Councils should be identified using an evidence based approach considering geographic location, tonnages of material and transport routes.*

### **5. Final Comment**

The reform process to date has caused considerable damage to the relationship between Local and State Government, as well as hindering investment in improving the management of waste. MWAC welcomes the call by the Panel for the State Government to make a decision on reform as soon as possible. In making a decision on a future waste management structure, Local Government anticipates that it will be fully consulted with to avoid unnecessary implications of ill-conceived interventions.

### **6. References**

Department of Treasury and Finance (updated 2010). Regulatory Impact Assessment Guidelines for Western Australia.

Department of Treasury 2012 -13 Budget Economic and Fiscal Outlook Budget Paper no.3, pg 308.

MWAC (2012). Submission on the Metropolitan Local Government Review Panel's Issues Paper.

MWAC (2012). Submission on the Metropolitan Local Government Review Panel's Draft Findings.

WALGA (2012). Submission on the Metropolitan Local Government Review Panel's Issues Paper.

WALGA (2012). Submission on the Metropolitan Local Government Review Panel's Draft Findings.

WALGA (2013). Submission on the Metropolitan Local Government Review Panel's Final Report.

*Legislation*

*Waste Avoidance and Resource Recovery Act 2007*

*Local Government Act 1995*